

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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CATHERINE WASH AND  
MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION,  
Complainants

Against

Docket No. 07 BPR 02155

FIRST REALTY ASSOCIATES,  
CHRIS STINES and TRACY CLEMENT,

Respondents

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Appearances: Caitlin Sheehan, Esq., for Complainants

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about August 2, 2007, Catherine Wash (“Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”) alleging that Respondents discriminated against her by denying her the opportunity to rent an apartment because she was pregnant and the apartment was not dealed. Complainant asserts that Respondents violated M.G.L. c. 151B sec. 4(11) and M.G.L. c. 111, sec. 199A. The property in question, 8 Leslie Street in Dorchester, MA, is a three-family, non-owner occupied property.

The MCAD issued a probable cause finding on October 9, 2007 and certified the

case for public hearing on January 8, 2009. A public hearing was held on September 10, 2009.

The Complainant and Respondents testified at the public hearing. Respondents were not represented by counsel. Counsel for Complainants submitted a post-hearing brief.

Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

## II. FINDINGS OF FACT

1. In August of 2007, Complainant Catherine Wash was seven months pregnant. She saw an advertisement in the Boston Herald for a two-bedroom apartment at 8 Leslie Street in Dorchester, MA. The apartment rented for between \$800.00 and \$850.00 per month. There were two telephone numbers listed in the advertisement. Complainant initially called the first number to inquire about the apartment.
2. Richard Ihenetu is the owner of Respondent First Realty Associates. First Realty Associates was advertising the rental unit at 8 Leslie Street in Dorchester, MA on behalf of its owner, Respondent Stacy Clement.
3. Respondent Clement had no lead certificate stating that the apartment was deleaded. According to Ihenetu, the apartment probably had lead paint because it was built before 1978, and lead paint was commonly used before that date.
4. Complainant testified that when she initially contacted First Realty Associates, her call was answered by Ihenetu, who told her to call another telephone number on the advertisement. She called the second number which was answered by

Respondent Chris Stines.

5. Ihenetu testified that he hired Stines as a scheduler. According to Ihenetu, Stines's job as a scheduler consisted of taking down the telephone numbers of callers and telling them that a realtor would call them back.
6. According to Complainant, Stines asked her how many people would be moving in, and Complainant told him it would be herself and her unborn child. Complainant testified that Stines said that the owner did not want anyone with children under the age of six moving into the apartment because it was not dealed. Respondent Stines, on the other hand, testified that he told Complainant over the phone that she could see the apartment at 8 Leslie Street but that she would have to wait for a realtor to call her back. I credit the testimony of Stines over that of Complainant.
7. According to Stines, Complainant immediately and repeatedly called him back until his wife took the phone and said, "You have to wait until [someone] calls you. That's it." I credit Stines's testimony that Complainant made more than one phone call and that she conducted herself in an overbearing and impatient manner.
8. According to Complainant, she only made a second call to Stines who said he was with the owner "right now" and handed the telephone to someone else. Complainant testified that a female voice came on the telephone and identified herself as the owner. The woman said that she did not want people with children under the age of six renting the apartment because it was not dealed. I do not believe Complainant's version of the telephone call.
9. Ihenetu testified that at a prior MCAD conciliation proceeding, Complainant

retracted her claim that she spoke to the owner of the apartment. According to Ihenetu, when Complainant met apartment owner Tracy Clement at the MCAD, Complainant acknowledged that Clement's voice was not the same as the voice of the person she talked to over the phone. I credit Ihenetu's testimony in this regard.

10. Respondent Tracy Clement testified that she never talked to Complainant over the phone. According to Clement, when she attended the conciliation proceeding at the MCAD, Complainant acknowledged that she did not speak with Clement over the phone. I credit Clement's testimony in this regard.
11. No individual associated with Respondent First Realty Associates ever returned Complainant's phone calls in order to make an appointment to show Complainant the 8 Leslie Street apartment.
12. Complainant subsequently found another place to live in Dorchester for \$1,300.00 per month plus utilities. Complainant initially lived there with her sister, her sister's boyfriend, and her son. The arrangement was not satisfactory and the other tenants moved out in October of 2007. Complainant became responsible for the entire rent for approximately two months after which she stopped paying rent allegedly because of "violations" in the apartment.
13. Complainant testified that after the incident with Respondent First Realty Associates, she felt depressed, upset, and angry. She talked to her parents and her baby's father about her feelings of stress. Complainant testified that because of her pregnancy, it was hard and stressful for her to go to work and to look for another apartment. Complainant testified that she feels upset and "disgusted" that

people discriminate.

14. As of September 17, 2007, the 8 Leslie Street apartment had not been rented to anyone else and was still being shown. There were no residents with children under age six in the building. Respondent Clement sold the apartment in August of 2009.

### III. CONCLUSIONS OF LAW

Under M.G.L. c. 151B, sec. 4(11), it is unlawful for “the owner of publicly assisted or multiple dwelling or contiguously located housing accommodations or other covered housing to refuse to rent or lease ... or otherwise to deny or withhold from any person such accommodations because such person has a child or children who shall occupy such premises ....” In order to make out a *prima facie* case of housing discrimination on the basis of children and lead paint, Complainant must show: (1) she was a member of a protected class at the time of the discriminatory act; (2) she attempted to apply for an apartment for which the Respondents were seeking applicants; and (3) she was deterred from applying under circumstances which give rise to an inference of unlawful discrimination. See Baker v. Collazo and Maggi, 4 MDLR 1421 (1982) (*prima facie* case where woman with child under six attempted to apply to rent apartment that was available for rent but was deterred from doing so because of child); Brennan v. Hong, 31 MDLR 129, 130 (2009) *citing* Wheelock College v. MCAD, 371 Mass. 130 (1976).

I find that Complainant was a member of a protected class at the time she sought to rent the apartment at 8 Leslie Street, that the apartment was available for rental, that Respondents were seeking applicants through a newspaper advertisement, and that Respondents failed to respond to Complainant’s telephone calls. There is credible

evidence that First Realty Associates and Tracy Clement were aware of the potential presence of lead paint in the apartment, that Complainant identified herself as pregnant when she responded to the newspaper advertisement, that Chris Stines and his wife promised Complainant a return phone call from a realtor, and that no realtor ever returned Complainant's calls. These circumstances give rise to an inference that Complainant was deterred from renting the 8 Leslie Street apartment based on the fact that she was about to give birth and would reside in the unit with a child under the age of six. Accordingly, Complainant has made out a *prima facie* case of discrimination on the basis of children and lead paint.

Once a *prima facie* case is established, the burden of production shifts to Respondents to articulate a legitimate, non-discriminatory reason for Complainant's failure to rent the apartment. See Wheelock College v. MCAD, 371 Mass. 130 (1976). Respondents failed to offer any such exculpatory explanation. Stines testified that he and his wife told Complainant to wait for a return call from a realtor, but the evidence indicates that no such return call was ever made. The absence of a return call prevented Complainant from applying for and renting the apartment. Had Respondents been interested in renting to Complainant, either Ihenetu or Clement would have returned Complainant's calls and arranged for her to see the apartment. There is no dispute that the unit in question remained available for rental and that, as of September 17, 2007, the 8 Leslie Street apartment had not been rented to anyone else and was still being shown.

Despite Respondents' failure to offer a reason for failing to return Complainant's phone calls, I conclude that the failure was not due primarily to the presence of lead paint but, rather, to Complainant's overbearing and impatient manner in dealing with Stines

and his wife over the phone. I infer that Respondents did not wish to deal with an individual of Complainant's demonstrable temperament as a prospective tenant. Complainant's demeanor at trial mirrored the impatient manner with which Complainant conducted herself over the phone and lent credence to Respondents' allegations that Complainant repeatedly called Stines even though he told her that she would have to wait for a return call from a realtor.

I also credit the testimony of Respondent Tracy Clement that she never talked to Complainant over the phone and that Complainant acknowledged this fact at the parties' MCAD conciliation. My finding in this regard is based on Clement's believable testimony and the unlikelihood that Clement would be standing next to Stines at the very moment that Complainant called him. Apartment owners use rental agents in order to distance themselves from the rental process rather than to maintain close physical proximity. This finding is not dispositive of the discrimination claim but serves to undermine Complainant's credibility as a witness.

#### IV. ORDER

For the reasons set forth in this decision, the Complaint is hereby dismissed.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So ordered this 5<sup>th</sup> day of November, 2009. .

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Betty E. Waxman, Esq., Hearing Officer